



80 South Jefferson Road
Whippany, NJ 07981

July 22, 2005

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St. S.W., TW A-325
Washington, D.C. 20554

Re: Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, CC Docket No. 02-33; IP-Enabled Services, WC Docket No. 04-36; and Petition of BellSouth Telecommunications, Inc., for Forbearance Under 47 U.S.C. 160(c) From Application of Computer Inquiry and Title II Common-Carriage Requirements

Notice of Written Ex Parte Presentation

Dear Ms. Dortch:

In light of the U.S. Supreme Court's recent decision in *NCTA v. Brand X Internet Services*, it appears the Commission may soon act to establish regulatory parity between cable broadband services and wireline broadband services. NECA – joined by the Independent Telephone & Telecommunications Alliance (ITTA), the National Telecommunications Cooperative Association (NTCA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and the United States Telecom Association (USTelecom) (collectively, the "Associations") support this effort.

As the Commission moves forward, however, it should bear in mind that not all wireline carriers are similarly situated. While regulatory parity may be expected to stimulate investment in broadband networks in areas served by larger wireline carriers, mandatory deregulation of wireline broadband services may have the opposite effect in areas served by smaller rate of return carriers.

Over 900 small telephone companies currently offer Digital Subscriber Line (DSL) transmission services under NECA's tariff and participate in associated revenue pools. Existing NECA tariff and pooling arrangements permit these companies to offer new services in an efficient and timely manner, while providing stable monthly cash flows and protection against unexpected demand reductions or increased costs. Absent pooling, for example, the potential loss of only one large customer could make a significant difference in whether a rural company can risk investments in new service deployments.

As the Commission considers potential approaches for deregulating broadband services offered by wireline companies generally, it should seek to preserve an option for rate of return carriers to continue providing these services, including xDSL transmission, under tariff if a carrier so chooses. The *Brand X* decision makes clear the Commission has ample authority to structure its regulatory

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approaches in a manner that considers the nature of the service offering at issue, as well as actual marketplace conditions.

Rate of return carriers face financial and competitive circumstances that differ markedly from those faced by larger companies. These companies may be forced to increase DSL rates or perhaps refrain from enhancing or even offering broadband services if existing tariff and pooling mechanisms become unavailable to them. Accordingly, the Commission should continue to permit these carriers to offer broadband transmission services under tariff, and to participate in NECA revenue pooling processes, in whatever regulatory framework it may establish for wireline broadband services generally.

Sincerely,

**NATIONAL EXCHANGE CARRIER
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